

EXECUTIVE JOURNALS
OF THE
THIRD LEGISLATURE
OF THE
STATE OF TEXAS.

SENATE CHAMBER, Saturday, Nov. 10, 1849.

The following communication from His Excellency, Governor Wood; was read.

EXECUTIVE OFFICE, Nov. 9th, 1849.

To the Honorable the Senate:

I present for your advice and consent thereto, the names of the following gentlemen as Notaries Public:

Benjamin F. Milburn, for Wharton county.

Francis Morison, George W. Still, Henry D. Woodsworth, John A. Rutherford, Wm. H. Milwee and Robert Price, for Lamar county.

Benjamin Gooch, for Williamson county.

Isham T. Patrick, for Polk county.

I have the honor to be your ob'dt. serv't.

GEO. T. WOOD.

On motion of Mr. Van Derlip, the communication was laid on the table, and made the special order for Monday, 12th instant.

Monday, Nov. 12th, 1849.

The communication was again taken up, and on motion of Mr. Van Derlip, laid on the table.

The following communication from His Excellency Governor Wood; was read.

EXECUTIVE OFFICE, Nov. 12th, 1849.

To the Honorable the Senate :

I herewith submit for your advice and consent, the following nominations :

Notaries Public appointed during the recess and qualified.

James M. Perry,	Anderson county.
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William L. Massey,	Bastrop	"
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James Gooch,	Bexar	"
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E. D. Nash,	Brazoria	"
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Churchill Jones,	"	"
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Russell Howard,	Cameron	"
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Benjamin Moses,	"	"
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S. P. Donnelly,	Cherokee	"
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John H. Cole,	Dallas	"
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William Burkitt,	Fannin	"
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Demetrius Willis,	Gonzales	"
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Charles R. Sanders, jr.,	Henderson	"
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Thomas W. Blake,	Leon	"
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John Patrick,	"	"
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John W. Ellis,	"	"
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H. B. Littlefield,	Liberty	"
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Thomas Carraway,	"	"
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Thomas H. Forrester,	Matagorda	"
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Albert Wadsworth,	"	"
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Mercer Fain,	Navarro,	"
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James R. Armstrong,	Rusk	"
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John McClarty,	"	"
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J. B. J. Oliver,	"	"
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E. C. Nesbitt,	Starr	"
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R. J. Holbrook,	Titus	"
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Thomas Willison,	"	"
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Josiah Fisk,	Travis,	"
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A. B. Holbrook,	Victoria,	"
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Thomas Lane,	Washington,	"
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Richard J. French,	"	"
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Jabez D. Giddings,	"	"
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Anderson J. Harrel,	Williamson,	"
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Directors of the Penitentiary.

James M. Maxey, Henderson Yoakum, Thomas G. Birdsall.

Pilot Commissioners.

R. M. Forbes, Z. K. Fulton and Moses Johnson, for Port Lavaca.

John W. Rose and James K. McCreary, for Passo Caballo.

On motion of Mr. Phillips, the communication was laid on the table until Thursday, Nov. 15th, 1849.

Thursday, Nov. 15th, 1849.

The communication was taken up, and on motion of Mr. Van Derlip, the same was laid on the table, and the Secretary instructed to call on His Excellency the Governor, to know whether the nominations are original appointments, are appointments to fill vacancies.

November 21st, 1849.

On motion of Mr. Van Derlip, the communication was taken up, and the Senate being informed that all of the nominations except those of Directors of the Penitentiary, and that of Mr. Har-ral, as Notary Public for Williamson county, are appointments to fill vacancies.

The Senate taking up each one separately, they were severally unanimously confirmed, except those which are original appointments, which were laid on the table.

EXECUTIVE OFFICE, Nov. 20th, 1849.

Gentlemen of the Senate :

In reply to the enquiry communicated to me through Mr. Raymond, your Secretary, in relation to the nominations made by me to your honorable body, on the 10th inst.; I transmit herewith, the statement of the Secretary of State, in relation to the character of the appointments made by me during the recess.

The appointment of the Directors of the Penitentiary was absolutely necessary in the prosecution of the objects of the law providing for the erection of that building, and was rendered especially so, by the fact that after the first day of January last, our statute for the punishment of crimes, had reference to this system of punishment, and without some steps being taken in relation to it, and a directorship organized, there could have been no punishments inflicted for the higher grades of offences.

I have the honor to be, your ob'dt. serv't.

GEO. T. WOOD.

DEPARTMENT OF STATE, Austin, Nov. 21, 1849.
To His Excellency, Governor Wood :

SIR: I have examined the official register of this office to ascertain whether any of the nominations made by your Excellency to the Senate, on the 10th instant, for Notaries Public, Directors of the Penitentiary, and Pilot Commissioners, are based upon original appointments made during the recess of the Senate, or upon appointments to fill vacancies only, which occurred during the recess; and I have the honor to report that, as regards the Notaries Public, they were all appointed to fill previously existing vacancies, caused by death, resignation, refusal to qualify, or removal from the county, with the exception of Anderson J. Harrell, Notary Public for Williamson county. This latter was an original appointment, where no vacancy previously existed.

The Pilot Commissioners were appointed to fill vacancies.

The Directors of the Penitentiary, were original appointments during the recess.

I have the honor to be, your Excellency's obd't. serv't.

W. D. MILLER,

Secretary of State.

The following communication from His Excellency, Governor Wood, was received, and read.

EXECUTIVE OFFICE, Nov. 21st, 1849.

Gentlemen of the Senate :

I have the honor herewith, to submit the enclosed names for your advice and consent, as Notaries Public, for the several counties therein named.

Samuel A. Roberts;	Fannin county.
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Alexander Berry;	Collin "
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Richard T. Steward, A. M. Crooks;	Red River "
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James A. Haynie,	Fayette "
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Joseph McDougal, Malcolm Gwin;	Smith "
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Geo. W. Lindsey, J. W. Thomas;	Burleson "
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The above are appointments to fill vacancies.

Joseph Williams, Thos. R. Fennison, James Hooker and J. R. Peebles; Hunt county.

Abner Johnson, Z. W. Moore and S. G. Parsons; Kaufman county.

David O. Norton, John Jordan and Jesse Gage; Van Zandt county.

The appointments for the three counties above named, are original ones.

The nominations were laid on the table.

The following communication, was received and read.

EXECUTIVE OFFICE, Nov. 21, 1849.

Gentlemen of the Senate :

I have the honor to submit for your advice and consent, the nomination of H. P. Brewster, as Attorney General of the State of Texas.

Respectfully, your ob'dt. serv't.

GEO. T. WOOD.

On motion of Mr. Pease, the nomination was made the special order for the 25th December, 1849.

November 28, 1849.

The following communication was received and read.

EXECUTIVE OFFICE, Nov. 27, 1849.

Gentlemen of the Senate :

I have the honor to submit for your advice and consent, the following nominations of Notaries Public, for the county of Fayette :

William G. Webb and John Haynie. Both to fill vacancies.

I have the honor to be,

GEO. T. WOOD.

On motion of Mr. Burleson, the nominations were taken up severally, and unanimously confirmed.

December 5, 1849.

On motion of Mr. Latimer, the nominations made on the 21st November, 1849, were taken up, and those made to fill vacancies were severally unanimously confirmed, with the exception of Geo. W. Lindsey, as Notary Public for Burleson county ; action upon which, was suspended, on motion of Mr. Wallace.

On motion of Mr. Van Derlip, the original appointments were laid on the table.

December 6, 1849.

The following communication was received, and read.

EXECUTIVE OFFICE, Dec. 6, 1849.

Gentlemen of the Senate :

I have the honor to submit to your advice and consent, the following nominations for Notaries Public.

For the county of Calhoun,

John C. Clelland.

" " Comal,

Christopher Luntzel.

" " Polk,

Isham T. Patrick.

" " Upshur,

C. C. Galloway.

" " Harris,

A. S. Ruthven.

Respectfully,

GEO. T. WOOD.

Mr. Van Derlip moved to lay the nominations on the table.

Mr. Phillips moved a division of the question. Carried.

The nominations of John C. Clelland, Christopher Luntzel, C. C. Galloway and A. S. Ruthven, were laid on the table.

The nomination of Isham T. Patrick, was confirmed.

December 12, 1849.

The nomination of C. C. Galloway was, on motion of Mr. Taylor, taken up and confirmed unanimously.

December 19, 1849.

The nomination of John C. Clelland was, on motion of Mr. Phillips, taken up and confirmed unanimously.

December 28, 1849.

The following communications were received and read.

EXECUTIVE DEPARTMENT, Dec. 28, 1849.

To the Honorable the Senate :

I respectfully request of the Honorable Senate the privilege of withdrawing the nomination of H. P. Brewster, Esq., made to you by my predecessor at an early day, during the present session; and will add, that the request is made with the concurrence of Mr. Brewster, as will appear by the enclosed communication from him.

P. H. BELL.

Austin, Dec. 29, 1849.

Sir :—The appointment of Attorney General having been conferred on me by your predecessor, only for the unexpired portion of his term, or until such time as it might suit you to supersede it by a regular appointment; you will be pleased therefore to withdraw my name, now in nomination for that office, before the Senate.

I have the honor to be, your obd't. serv't.

H. P. BREWSTER.

To His Excellency, P. H. Bell.

On motion of Mr. Phillips, leave was given to withdraw the nomination.

EXECUTIVE DEPARTMENT, Dec. 28, 1849.

To the Honorable the Senate :

I have the honor to present to the Honorable Senate, the nomination of James Webb, Esq., for the office of Secretary of State, and very respectfully ask your advice and concurrence.

P. H. BELL.

On motion of Mr. Gage, the communication was made the special order for to-morrow, the 29th Dec., 1849.

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Saturday, 29th December, 1849.

The yeas and nays were called on the confirmation of the nomination of James Webb, for the office of Secretary of State, and stood thus:

Yeas: Messrs. Brashear, Burleson, Cooke, Gage, Grimes, Hart, Kinney, Latimer, McRae, Moffett, Parker, Pease, Phillips, Portis, Robertson; Truit, Ward, Walker and Wallace—19.

Nays: None.

Confirmed unanimously.

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January 3, 1850.

The following communication was received and read.

EXECUTIVE DEPARTMENT, Jan. 3, 1850.

To the Honorable the Senate :

In conformity with the first section of an act to provide for the civil organization of the counties of Presidio, El Paso, Worth and Santa Fé, approved this day, I have the honor to nominate Robert S. Neighbors, Esq., for Commissioner, to execute the provis-

ions of said act, and respectfully ask the advice and consent of the Senate.

P. H. BELL.

On motion of Mr. Parker, the communication was laid on the table until to-morrow, Jan. 4, 1850.

On motion of Mr. Grimes, the vote was reconsidered, and the nomination taken up.

The yeas and nays being called on its confirmation, stood as follows:

Yeas: Messrs. Burleson, Cooke, Davis, Gage, Grimes, Hart, Kinney, Latimer, McRae, Moffett, Parker, Phillips, Portis, Robertson, Taylor, Truit, Van Derlip, Ward, Walker and Wallace—18.

Nays: None. Unanimously confirmed,

January 7, 1850.

The following communications were received and read.

EXECUTIVE DEPARTMENT, Jan. 7, 1850.

To the Honorable the Senate:

I have withheld to the present time, the nomination to the Senate of Attorney General, when, by the right of the Constitution, I might, as I conceive, without any impropriety, have done so at an earlier day. But, learning through a channel entitled to my confidence, that a portion of your honorable body entertained doubts of the entire propriety of acting upon such nomination, after the final action on the proposed amendment of the Constitution, by the Senate; I felt reluctant to do so, from a high sense of the patriotic convictions which I felt assured influenced you. I was, also, unwilling, with the objections which were believed to exist with your honorable body, to subject any nominee to the unpleasant supposition that the Senate's action, if unfavorable, (or indeed, without any action,) might possibly have been controlled by an unfavorable estimate of the individual. Such might have been the construction placed upon the issue. It would, at least, have opened the door to speculation of, perhaps, a disparaging character. To avoid this, was certainly not an unworthy motive.

But, seeing the interest of the State injuriously affected by further delay, I feel constrained to waive all former considerations of delicacy, and with due deference to Senators whose opinions may be adverse to my own, I must solicit of the honorable Senate an expression upon the nomination which I shall have

the honor now to make. It is from a strict sense of duty, and without any ulterior motive.

It is believed that the second objection entertained to presenting the nomination at a previous day, has been removed, from an expression most favorable to it, which has been made by the co-ordinate branch of the Legislature.

It would be unnecessary for the Executive to urge upon the Honorable Senate, the importance at this time, that the State should be ably represented in the cases now pending in the Supreme court.

The nomination alluded to, is herewith transmitted.

P. H. BELL.

EXECUTIVE DEPARTMENT, Jan. 7, 1850.

To the Honorable the Senate :

By authority of the 12th Sec., 4th article of the Constitution, I have the honor to nominate, Thomas W. Shedd, Esq., of the county of Harrison, for the office of Attorney General of the State, and most respectfully ask the advice and consent of the Senate.

P. H. BELL.

On motion of Mr. Portis, the communications were made the special order for the 8th January.

January 8, 1850.

The nomination of Attorney General being the special order.

On motion of Mr. Van Derlip, the communications from the Governor in relation thereto, were referred to a Select committee.

Messrs. Van Derlip, Parker and Portis, were appointed said committee.

January 11, 1850.

The Select committee to which was referred the communications of the Governor, in relation to an Attorney General, made the following report :

SENATE CHAMBER, January 9th, 1850.

Hon. JOHN A. GREER,

President of the Senate :

The Special committee, to whom was referred the communication of his Excellency, the Governor, with an accompanying nomination of an individual to fill the vacancy in the office of

Attorney General, have had the same under consideration, and a majority have instructed me to report that in the opinion of your committee, the Governor and Senate have no power to fill the vacancy existing in said office by appointment. By virtue of the 37th section of the general provisions of the Constitution, two-thirds of both branches of the last Legislature proposed certain amendments to the Constitution, which were adopted by a very large majority of the qualified electors of the State.

The Senate by a unanimous vote ratified and confirmed said proposed amendments at an early day of the present session, and the House of Representatives has subsequently ratified them by the required constitutional majority.

The proposed amendments have therefore become a part of the Constitution by the joint action of two successive Legislatures, and of the people in the mode prescribed by the section referred to. These amendments having provided a different authority to fill a vacancy in this office, it can now only be filled in the mode prescribed by the amendments, which requires that this officer shall be chosen by the qualified electors of the State. Your committee attach no importance to the fact, that these amendments have not yet received the signature of the Governor, or been deposited in the office of the Secretary of State. Amendments of the Constitution made in the manner prescribed by that instrument itself do not require the signature of the Executive to render them valid, nor does their mere deposit in the office of the Secretary of State, impart to them any additional or binding effect.

When the prescribed action by the proper authorities has been exercised in the manner required, the amendments become a part of the Constitution by the express provision of the Constitution itself. This action having been exercised by the proper authority in the prescribed manner, the amendments referred to have already become a part of the Constitution, and the Executive and Senate are without the authority to make the appointment recommended in the communication.

Your committee entertain the highest respect for the qualifications of the gentleman recommended by the Executive to fill the vacancy, and are disposed to regard the selection as eminently judicious and creditable. But the reasons previously stated, compel a majority of your committee to recommend that no further action be had by the Senate upon the communication and accompanying nomination, and that the committee be discharged from the further consideration of the subject.

D. C. VAN DERLIP, Chairman.

The majority of your committee beg leave to state further,

that they have ascertained that since the amendments to the Constitution were enrolled by the enrolling clerk of the Senate, a motion was made in the House of Representatives to reconsider the vote ratifying said amendments, which motion your committee is informed, now lies upon the table of the House. What effect this circumstance may have in relation to the action of the Senate, is for that body to decide, but the majority of your committee are of opinion that it furnishes no valid reason to assume the authority of making the appointment.

D. C. VAN DERLIP.

ISAAC PARKER.

Mr. Portis dissenting.

Upon the adoption of the report, the yeas and nays were called, and stood thus:

Yeas: Messrs. Brashear, Burleson, Cooke, Gage, Grimes, Hart, Latimer, McRae, Moffett, Parker, Pease, Taylor, Truit, Van Derlip, Ward, Walker and Wallace—17.

Nays: Messrs. Davis, Kinney, Phillips, Portis and Robertson—5. Report adopted.

January 16, 1850.

The following communication was received and read.

EXECUTIVE DEPARTMENT, Jan. 15, 1850.

To the Honorable the Senate:

I respectfully submit for the advice and consent of your Honorable body, the following nominations, viz:

James N. Perry, Notary Public, Anderson county.

R. M. Hannay, Z. Hunt, Ernst Kleberg, John O. Whitfield; Austin county.

J. Wilson Cooke, James B. Lee, Charles D. Lytle; Bexar county.

Andrew McMillen, James M. Price; Brazos county.

Matthew M. Hitchcock, Burleson county.

Richard M. Shinn, Caldwell county.

Samuel Hinton, A. J. Heddrick, James Gooch; Cameron county.

Thomas H. Owens, Cass county.

Henry M. Dawson, A. H. Shanks; Cherokee county.

George W. Smith, Colorado county.

David P. Farris, Hance Smith, Joseph Whitenburg; Ellis county.

John P. Borden, William Craft, G. Owen; Fort Bend county.
 Henry Austin, A. J. Yates; Galveston county.
 William H. Jones, Gonzales county.
 A. S. Ruthven, Harris county.
 Neil McLane, Carey Askew; Harrison county.
 William H. Houghton, Robert C. Graves, Joseph Glover; Hopkins county.
 James Hooker, J. R. Ruble, G. W. Dunbar, Thomas R. Tension; Hunt county.
 Thomas Myers, Jefferson county.
 Matthew Taylor, Leon county.
 William Chambers, Liberty county.
 Jonathan S. Collard, Montgomery county.
 H. A. Gilpin, Judson Mann; Nueces county.
 Francis L. Barziza, Robertson county.
 F. V. McKee, San Augustine county.
 John G. Chambers, Titus county.
 Henry M. Lawson, Rusk county.
 E. Nesbit, Starr county.
 James M. Long, Travis county.
 Newton Robertson, Thomas Walker; Upshur county.
 A. J. McKay, Williamson county.
 William P. Smith, Fayette county.

P. H. BELL.

On motion of Mr. Parker, made the special order for the 18th instant.

January 18, 1850.

The communication being the order for this day.

On motion of Mr. Portis, the nomination of G. Owen was laid on the table.

On motion of Mr. Pease, the nomination of A. J. Yates was laid on the table.

On motion of Mr. Moffett, the nomination of Thomas Myers was laid on the table.

The other nominations were confirmed *in solido*, unanimously.

January 24, 1850.

The following communication was received and read:

EXECUTIVE DEPARTMENT, }
Austin, Jan. 24, 1850. }

To the Honorable the Senate:

I respectfully submit for the advice and consent of your Honorable body, the following nominations, viz:

Notaries Public:

Alexander Berry;	Collin county.
A. G. Owen, (instead of G. Owen, as sent in on a former day,)	Fort Bend county.
Robert N. Allen;	Hays county.
Cyrus H. Randolph,	Houston "
William Myers, (instead of Thomas Myers, as sent in on a former day,)	Jefferson county.
R. C. Doom and Thomas H. Brenam;	Jasper county.
C. M. Winkler and George M. Hogan;	Navarro "
James B. Johnson and Nathan P. West,	San Augustine "
D. M. Short and L. H. Ashcraft,	Shelby "
Edward Downey and H. L. Upshur,	Starr "
Walton H. Payne,	Upshur "
Joseph W. Hackett,	Walker "
Samuel S. Givens, and Samuel McBride, Commissioners of	Pilotage, Pass Caballo.

P. H. BELL.

On motion of Mr. Parker, made the order of the day for the 25th inst.

January 25, 1850.

On motion of Mr. Wallace, the nominations for Notaries Public for San Augustine county, were laid on the table.

On motion of Mr. Phillips, the nominations were confirmed *in solido*, unanimously.

January 29, 1850.

On motion of Mr. Wallace, the nominations for Notaries Public for San Augustine county were taken up, and James B. Johnson unanimously confirmed.

On further motion of Mr. Wallace, the nomination of Nathan P. West was laid on the table.

January 30, 1850.

The following communication was received and read :

EXECUTIVE DEPARTMENT,
Austin, Jan. 30, 1850. }*To the Honorable the Senate :*

Under the second section of an act, approved Jan. 21st, 1850, to secure to the German Emigration company and their colonists the lands to which they are entitled, I have the honor to submit for the advice and concurrence of the Senate, the nomination of Joseph P. Portis, of the county of Washington, as Commissioner, and respectfully ask the confirmation of the Senate.

P. H. BELL.

On motion of Mr. Gage, the communication was made the special order for the 31st instant.

January 31, 1850.

The nomination of Mr. Joseph P. Portis being the special order, was unanimously confirmed.

February 4, 1850.

The following communication was received and read :

EXECUTIVE DEPARTMENT,
Austin, Feb. 4, 1850. }*To the Honorable the Senate :*

I respectfully submit for the advice and consent of your Honorable body, the following nominations, viz :

Notaries Public :

James L. Ewing, James Findley ;	Angelina county.
R. F. Clements, Hal Runnels ;	Brazoria "
John H. Pearson ;	Grimes "
Samuel Huffer, J. B. Luker, James Boggs, John Leadbetter ;	Henderson county.
Abner Johnson, R. W. Gray, E. E. Tinnin, James Kysear,	
S. G. Parsons ;	Kaufman county.
Charles de Montel ;	Medina county.
B. F. Rice, A. C. Dodd ;	Milam "
E. E. Cowsar, Harvy Yarbrough ;	Smith "
James Cowan ;	Titus "

J. Larkin Austin, William Allen, John Moore, Abram McInturf, A. Fitzgerald ; Van Zandt county.

James Armstrong ; Williamson county.

William Taylor, Sr., William K. Elliott, Stephen Aldred ; Panola county.

William O'Hare ; Rusk county.

P. H. BELL.

On motion of Mr. Gage, the communication was made the special order for the 6th instant.

February 5, 1850.

The following communication was received and read :

EXECUTIVE DEPARTMENT, }
Austin, Feb. 5, 1850. }

To the Honorable the Senate :

Under the several acts enumerated as follows : An act to perfect land titles in Castro's colony, approved 22d Jan. 1850 ;

An act to secure to all actual settlers within the limits of the colony granted to Peters and others, the land to which they are entitled as colonists, approved Jan. 21, 1850 ;

An act for the relief of the citizens of Mercer's colony, approved Feb. 2d, 1850, I have the honor to present the following nominations for Commissioners provided by the different acts respectively, and very respectfully ask the advice and consent of the Senate :

Under the first recited act I nominate John M. Carolan, Esq., of the county of Bexar.

Under the second recited act I nominate Thomas W. Ward, of Travis county.

And under the last recited act I nominate John M. Crockett, of Dallas county.

P. H. BELL.

On motion of Mr. Gage, the communication was made the special order for the 6th inst.

February 6, 1850.

The communication of the 4th inst. was taken up, and the nominations therein made were confirmed *in solido*, unanimously.

The communication of the 5th was taken up. The yeas and nays being called on the nomination of John M. Carolan, stood thus :

Yeas: Messrs. Brashear, Cooke, Davis, Gage, Grimes, Hart, McRae, Moffett, Parker, Phillips, Portis, Robertson, Taylor, Truitt, Van Derlip, Ward, Walker and Wallace—18.

Unanimously confirmed.

The question being taken on the confirmation of Thos. Wm. Ward, the yeas and nays were as follows:

Yeas: Messrs. Brashear, Davis, Gage, Grimes, Kinney, McRae, Pease, Phillips, Portis, Van Derlip and Wallace, 11.

Nays: Messrs. Cooke, Hart, Moffett, Parker, Robertson, Taylor, Ward and Walker, 8.

The question being raised whether it required a vote of two-thirds to confirm a nomination under the law under which this nomination was made: the President decided that two-thirds was required, from which decision an appeal was taken, and the yeas and nays being called, stood thus:

Yeas: Messrs. Burleson, Cooke, Grimes, Hart, Latimer, Moffett, Parker, Robertson, Taylor, Ward, Walker and Wallace, 12.

Nays: Messrs. Brashear, Davis, Gage, Kinney, McRae, Pease, Phillips, Portis, Truitt and Van Derlip, 10.

So the question was sustained.

Mr. Walker moved to lay the nomination of Mr. Crockett on the table until the 7th instant, and the yeas and nays being called, stood thus:

Yeas: Messrs. Cooke, Grimes, Hart, Moffett, Parker, Robertson, Taylor, Truitt, Ward, Walker and Wallace, 11.

Nays: Messrs. Brashear, Burleson, Davis, Gage, Kinney, McRae, Pease, Phillips, Portis and Van Derlip, 10; carried.

February 7th, 1850.

Mr. Cooke moved to reconsider the vote taken on yesterday on the question, "whether it required a vote of two-thirds of the Senate to consent to the appointment of a Commissioner, under the act to secure lands to settlers in Peters' Colony."

Mr. Pease presented the following communication:

SECRETARY OF STATE'S OFFICE,

Austin, February 5, 1850.

I, James Webb, Secretary of State, do hereby certify, that according to the provisions of the two acts, in relation to Peters and Mercer's Colonies, the Commissioners of said Colonies are directed to be appointed by the Governor of the State of Texas, by and with the advice and consent of the Senate.

Given under my hand, in office, this 5th day of February, A. D., 1850.

JAMES WEBB.

Upon Mr. Cooke's motion to reconsider, the yeas and nays stood thus :

Yeas—Messrs. Brashear, Burleson, Cooke, Davis, Gage, Grimes, Kinney, McRae, Pease, Phillips, Portis, Truit, Van Derlip and Wallace—14.

Nays—Messrs. Hart, Latimer, Moffett, Parker, Robertson, Taylor, Ward and Walker—8 ; carried.

The question now was upon the appeal, and the yeas and nays being called for, stood :

Yeas—Messrs. Burleson, Grimes, Hart, Latimer, Moffett, Parker, Robertson, Taylor, Ward, Walker and Wallace—11.

Nays—Messrs. Brashear, Cooke, Davis, Gage, Kinney, McRae, Pease, Phillips, Portis, Truit and Van Derlip—11.

There being a tie, the President requested time to consider of the question,

The yeas and nays being called on the confirmation of the nomination of John M. Crockett, were as follows :

Yeas—Messrs. Brashear, Burleson, Davis, Gage, Grimes, Kinney, McRae, Moffett, Robertson, Taylor, Truit, Ward, Walker and Wallace—14.

Nays—Messrs. Cooke, Hart, Parker, Pease, Phillips, Portis and Van Derlip—7 ; confirmed.

February 8th, 1850.

The President of the Senate read the following decision :

The equal division of the Senate upon the question, "whether it required a two-third vote to confirm the nomination of the Commissioner appointed under an act to secure to all actual settlers within the limits of the colony granted to Peters and others, the lands to which they are entitled as colonists, approved January 21st, 1850 ; has devolved upon me as President of the Senate, a duty which would have been productive of much embarrassment if the question it presents were now to be decided for the first time.

It is not doubted that the Legislature in prescribing the mode of appointing this Commissioner, had in view (in a general way,) the mode of appointing various officers, by the Governor and Senate, as prescribed in the Constitution. It becomes my duty therefore, to decide this question without taking into consideration the wishes of the parties concerned, neither do I consider that I have any power to look into the intention of the framers of the law, but to ascertain the proper and legal meaning of the language used. In article 4th, section 5th of that instrument,

it is declared that "the Governor shall nominate, and by and with the advice and consent of *two-thirds* of the Senate, shall appoint the Judges of the Supreme and District Courts." The 12th section of the same article, provides in like manner for the appointment of the Attorney General. The 5th article in section 19th, prescribes the same mode for the appointment of Notaries, and the 16th section, of the same articles, declares that "there shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate. These are the only clauses in the Constitution which bear upon the subject under consideration, neither is there any clause in the Constitution giving to the Governor any power to fill offices created by legislative enactment.

The act under which this question has arisen, declares that the Governor shall appoint by and with the advice and consent of the Senate. What interpretation then should be given to the clause "by and with the advice and consent of the Senate," when the two-third rule is not specifically mentioned?

The Constitution of the United States contains provisions similar to those of our Constitution, which have been referred to, and are almost identical with the section of the clause in relation to Peters' colony, which provides for the appointment of a Commissioner.

It is declared in article 2d, section 2d, second clause of that instrument, that "he (the President,) shall have power by and with the advice and consent of the Senate, to make treaties provided two-thirds of the Senators present concur; and he shall nominate and by and with the advice and consent of the Senate, shall appoint ambassadors, etc." While the number of Senators whose concurrence is necessary to the ratification of a treaty is fixed at two-thirds, in language too clear and plain to admit of question, it seems to be held on high authority to be equally certain that the advice and consent of a majority of the Senate, is sufficient to confirm an appointment to office, notwithstanding the two clauses are in immediate connection with each other.

The late Judge Story, whose acknowledged learning and ability have conferred on him the highest rank as a jurist, in treating of this power of the President and Senate of the United States, in his Commentaries on the Constitution, says: "That the President is to nominate, and thereby has the sole power to select for office; but this nomination cannot confer office unless approved by a *majority* of the Senate."

Whatever may have been my first impressions upon the question under consideration, the settled construction of the same lan-

guage (as that now under consideration,) announced on authority so worthy of respect as that of Judge Story, leaves me no ground for doubt or hesitation, in coming to the conclusion that it requires only a majority of the Senate to advise and consent to the nomination of a Commissioner for the Colony, granted to Peters and others.

J. A. GREER,

President of the Senate.

February 6th, 1850.

The following communications were received and read :

Executive Department,

Austin, Feb. 6th, 1850. }

To the Honorable the Senate :

I have the honor to lay before you the nominations of A. Reed and Jesse Pendleton, as Commissioners of Pilotage, for the port of Lavaca; and respectfully ask a confirmation of the same by the Senate.

P. H. BELL.

Executive Department,

Austin, Feb. 6th, 1850. }

To the Honorable the Senate :

I have the honor to nominate Benjamin F. Hill, Esq., for the office of Adjutant General of the State of Texas, and respectfully ask the advice and consent of the Senate.

P. H. BELL.

On motion of Mr. Parker, the nominations of Mr. Reed and Mr. Pendleton, were made the order for to-morrow, 7th inst.

On motion of Mr. McRae, the nomination of B. F. Hill, was made the special order for to-morrow.

February 7th, 1850.

The communications were taken up, Mr. Reed and Mr. Pendleton, unanimously confirmed : Mr. Hill also, was unanimously confirmed. The following communications were received and read :

Executive Department,

Austin, Feb. 7th, 1859. }

To the Honorable the Senate :

I nominate to the Senate, James Gillaspie, Esq., of the county of Walker, for Superintendent of the Penitentiary, and respectfully ask the advice and consent of the Senate,

P. H. BELL.

Executive Department,
Austin, Feb. 7th, 1850.

To the Honorable the Senate :

Notary Public :

I have the honor to submit, for the advice and consent of the Senate, the following nominations for Notaries Public, viz :

Robert J. Battle and Warren R. Dolby ; Bowie county ;
Starr Benge and Morrison Raborn ; Grayson county.
A. Wadsworth ; Matagorda county.

Hiram Norvell and Isaac Dewees ; Sabine county.

Bartley Stanchfield and Benjamin F. Milburn ; Wharton Co.,

P. H. BELL.

Executive Department,
Austin, Feb. 8th, 1850.

To the Honorable the Senate :

I have the honor to nominate James B. Miller and William H. Bourland, to constitute the Board of Commissioners contemplated by the act to provide for the investigation of land titles in certain counties therein mentioned, approved this day ; and I nominate R. Jones Rivers, Esq., as the Attorney provided for by said act ; I most respectfully ask the advice and consent of the Senate.

P. H. BELL.

February 8th, 1850.

The nomination of Mr. Gillaspie was unanimously confirmed.

The nominations of R. Jones Rivers and James B. Miller, were unanimously confirmed.

The nomination of W. H. Bourland, was confirmed, Mr. Parker only voting nay.

The nominations for Notaries Public were confirmed unanimously, "*in solido*."

The following communications were received and read :

Executive Department,
Austin, Feb. 7th, 1850.

To the Honorable the Senate :
I have the honor to submit, for the advice and consent of the Senate, the following nominations for Notaries Public, viz :